



Construction Policy Bulletin

CPB 03-11 Scope of Contract

References: *Standard Specification*

Section 4-1.01, "Intent of Plans and Specifications"

Section 4-1.03, "Changes"

Section 4-1.03B(3), "Eliminated Items"

Section 8-1.11, "Termination of Contract"

Section 9-1.08, "Adjustment of Overhead Costs"

Construction Manual

Section 3-403, "Changes"

Section 5-302, "Contract Change Order Policy"

Section 5-311, "Contract Change Order Approval"

Section 5-311A, "Division of Construction Approval"

Public Contract Code

Section 10122, "Contracts; Day Labor"

Section 10250, "Change in Unit Basis Contract"


Section 10251, "Provisions re Extra Work"

Deputy Directives

DD-26 Revised, May 1, 1999, "Use of Director's Orders"

Effective Date: January 1, 2004

Approved:


ROBERT PIEPLOW, Chief
Division of Construction

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Background

Project plans, specifications, and other bid documents define the scope of a contract, as they describe the details for the construction and completion of the whole work contemplated.

Public Contract Code, Section 10250, allows the Department of Transportation (Department) to increase or decrease quantities of work to be done under a unit basis contract during the progress of the work. The Public Contract Code, Section 10251, allows the Department to insert provisions in contracts for the performance of extra work and the furnishing of additional materials for the proper completion of the whole work contemplated, provided all "bidders had an equal opportunity of knowing the proposed terms for the extra work."

Public Contract Code, Section 10122, requires work to be awarded to the lowest responsible bidder, unless it is in case of an emergency due to "the failure or threat of failure of any bridge or other highway structure," "the failure or threat of failure of any dam, reservoir, aqueduct, or other water facility or facility appurtenant thereto," or "damage to a state-owned building or any other state-owned real property or improvements," or if the Director deems "it is not in the best interests of the state." Informal bidding can only be used after a Director's Order has been signed. Using this authority typically results in a new contract.

Existing Policy

The *Construction Manual*, Section 3-403, "Changes," limits changes to those required to complete the work as contemplated at the time the plans and specifications were approved, unless compelling reasons exist that justify changes outside the scope of the current contract.

The *Construction Manual*, Section 5-302, "Contract Change Order Policy," describes the process for adding work that is outside the intent of the original contract. The process includes the district director requesting approval from the Division of Construction chief in a best interest determination memorandum, and the Division of Construction chief determining if the change is in the best interest of the Department.

New Policy

A best interest determination memorandum will no longer be used in determining if a contract change is outside the scope of the original contract.

Work that is outside the scope of an existing contract should be done in a separate contract. However, in special situations, it may be added to an existing contract if:

1. A Director's Order has been approved for the new work in accordance with Deputy Directive 26 dated May 1, 1999,
2. The Division of Construction chief concurs with adding new work to the existing contract by co-signing the Director's Order, and
3. The contractor agrees to the contract change.

New Procedures

District construction personnel are to consider the following in determining if the proposed change is within the scope of the original contract. Answering "yes" to any of the following questions indicates that the new work may be outside the scope of the original contract:

1. Is the type of work for the proposed change significantly different from other types of work within the original contract?
2. Is it necessary for the prime contractor or subcontractors to mobilize specialized forces and equipment to perform the work of the proposed change?
3. Will the estimated cost of the proposed work, when combined with all other contract changes, be outside the approved contract allotment?
4. Does the proposed change represent a significant deletion to the original contract?
5. Does the proposed change significantly delay completion of the contract when compared to the number of original contract working days?
6. Is the proposed change outside the original contract limits?
7. Can the project be completed as contemplated at the time of bid without the proposed change?

Although these guidelines assist in determining if a proposal is within the scope of the existing contract, a final determination requires a thorough analysis of all the facts and circumstances surrounding the proposed change or new work. If district construction is uncertain if the new work is within the scope of the original contract, the district construction deputy director must consult the appropriate Division of Construction field coordinator for a determination.

When it is determined that new work resulting from a Director's Order is best accomplished by adding it to an existing contract, district construction requests the Division of Construction chief co-sign the Director's Order. District construction may then process a change order incorporating such new work in accordance with the procedures described in Section 5-311, "Contract Change Order Approval," of the *Construction Manual*.

If you have questions or comments about this bulletin, please contact Tony Tavares, Division of Construction, Chief Office of Contract Administration, at (916) 654-5431 or by e-mail at tony_tavares@dot.ca.gov.